

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

OSVALDO PUMBA,

Plaintiff,

v.

AMANDA MEAD VOLPE, BROOKE
ALBERTA GAGLIONE, TARALYNA
GONZALEZ, REGISTER NURSE
KAYSCE, and JANINE DONATE,

Defendants.

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CIVIL ACTION NO. 22-2929

ORDER

AND NOW, this 25th day of October, 2022, after considering the applications for leave to proceed *in forma pauperis* (Doc. Nos. 1, 5), prisoner trust fund account statement (Doc. No. 4), and complaint (Doc. No. 2) filed by the *pro se* plaintiff, Osvaldo Pumba; and for the reasons set forth in the separately filed memorandum opinion, it is hereby **ORDERED** as follows:

1. The applications for leave to proceed *in forma pauperis* (Doc. Nos. 1, 5) are **GRANTED**, and the plaintiff has leave to proceed *in forma pauperis*;

2. Osvaldo Pumba, #0200144, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The court directs the Warden of the Lehigh County Jail or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Pumba's inmate account; or (b) the average monthly balance in Pumba's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this order to the court with a reference to the docket number for this case. In each succeeding month when the amount in Pumba's inmate trust fund

account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the clerk of court equaling 20% of the preceding month's income credited to Pumba's inmate account until the fees are paid. Each payment shall refer to the docket number for this case;

3. The clerk of court is **DIRECTED** to **SEND** a copy of this order to the Warden of the Lehigh County Jail;

4. The complaint (Doc. No. 2) is **DEEMED** filed;

5. The following claims in the complaint are **DISMISSED WITHOUT PREJUDICE**: (a) The Eighth Amendment deprivation of food claims against Taralyna Gonzalez and Amanda Mead Volpe; (b) The Eighth Amendment conditions of confinement claim against Amanda Mead Volpe, Brooke Alberta Gaglione, and Janine Donate; and (c) any equal protection claims against Janine Donate;

6. The clerk of court is **DIRECTED** to send the plaintiff a blank copy of the court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number;¹

7. The plaintiff is given **thirty (30) days** to file an amended complaint if he can allege additional facts to state plausible Eighth Amendment claims against Taralyna Gonzalez, Amanda Mead Volpe, Brooke Alberta Gaglione, and Janine Donate; and plausible equal protection claims against Janine Donate. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Pumba's claims against each defendant, and shall bear the title "Amended Complaint" and the case number, No. 22-2929. If the plaintiff files an amended complaint, his amended complaint must be a complete document that includes all the bases for the plaintiff's

¹ This form is available on the court's website at: <https://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.

claims, including claims that the court has not yet dismissed if he seeks to proceed on those claims.

For example, the plaintiff must include in his amended complaint the allegations supporting his excessive force claim against Amanda Mead Volpe and his deliberate indifference claim against Register Nurse Kaysce, if the plaintiff seeks to proceed on those claims. Claims that are not included in the amended complaint will not be considered part of this case. When drafting his amended complaint, the plaintiff should be mindful of the court's reasons for dismissing his claims as explained in the court's memorandum opinion. Upon the filing of an amended complaint, the clerk of court shall not make service until so ordered by the court;

8. If the plaintiff does not file an amended complaint, the court will direct service of his initial complaint on only the defendant Amanda Mead Volpe as to the excessive force claim, and the defendant Register Nurse Kaysce as to the deliberate indifference claim, as described in the court's memorandum opinion. The plaintiff may also notify the court if he seeks to proceed on these claims rather than file an amended complaint. If he files such a notice, the plaintiff is reminded to include the case number for this case, No. 22-2929;

9. The clerk of court is **DIRECTED** to send the plaintiff (a) a copy of this order and the separately filed memorandum opinion, and (b) a copy of the complaint in this case (Doc. No. 2); and

10. The time to serve process under Rule 4(m) of the Federal Rules of Civil Procedure is **EXTENDED** to the date 90 days after the court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.